

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BANK OF THE PACIFIC,

Plaintiff,

vs.

F/V ELECTRA BLUE, Official Number
567048 *in rem*; and FISHING BLUES,
LLC, ZED BLUE and ROBIN BLUE,
husband and wife, *in personam*,

Defendants,

IN ADMIRALTY

Case No. 2:20-cv-01103

ORDER APPOINTING MARINE
LENDERS SERVICES LLC AS
SUBSTITUTE CUSTODIAN

[CLERK'S ACTION REQUIRED]

Plaintiff Bank of the Pacific, having moved this Court for an Order appointing Marine Lenders Services LLC ("Marie Lenders") as substitute custodian, in lieu of the U.S. Marshal, of the defendant vessels F/V ELECTRA BLUE, Official Number 567048 (collectively with all appurtenances, the "ELECTRA BLUE" or "Vessel"), and all its appurtenances, including 360 crab pots ("Crab Pots") and the Court having reviewed Plaintiff's Motion for Appointment of Substitute Custodian dated July 16, 2020, and the Declaration of Buck Fowler, Jr. dated July 8, 2020 in support of that Motion, makes the following recitals:

Recitals

1
2 1. On July 16, 2020, Bank of the Pacific filed its verified Complaint herein,
3 requesting that the vessel F/V ELECTRA BLUE, Official No. 567048 (the “Vessel”), its
4 engines, machinery, and other appurtenances, be condemned and sold to pay plaintiff’s claims
5 and for other proper relief.

6
7 2. It is anticipated that the Clerk of the Court will be authorized by this Court to
8 issue a Warrant of Arrest commanding the United States Marshal for this District to arrest and
9 take the Vessel and its appurtenances, including 360 crab pots (the “Crab Pots”), into custody
10 and to detain it in custody until further order of this Court.

11 3. It is contemplated that the United States Marshal will seize the Vessel and Crab
12 Pots forthwith. Custody of the Vessel by the U.S. Marshal requires the services of one or more
13 keepers at a charge of at least \$1,200.00 per day per keeper, not including charges for moorage
14 and the other services usually associated with safekeeping vessels similar to the defendant
15 Vessel. Custody of the Crab Pots by the U.S. Marshal would similarly require the services of
16 one or more keepers at a charge of at least \$1,200.00 per day per keeper, not including charges
17 for storage and the other services usually associated with safekeeping of the fishing gear.

18 4. The defendant Vessel is currently moored at Squalicum Harbor Marina in
19 Bellingham, Washington. After arrest, it may be necessary to move the vessel to the facilities of
20 Marine Lenders Services, LLC at 5350 30th Avenue NW, Seattle, Washington, or to other
21 suitable moorage. It is anticipated that after arrest prior members of the crew of the vessel may
22 wish to remove items of personal property belonging to such crew members, and that persons
23 interested in purchasing the vessel, either in lieu of foreclosure or in anticipation of the Marshal’s
24 sale of the vessel, may wish to board the vessel for purposes of conducting visual examinations
25 of the vessel and its equipment. Plaintiff is agreeable to facilitating prior crew members
26

1 removing their items of personal property, and interested parties inspecting the vessel on the
2 terms stated in this Order.

3 5. The Crab Pots are believed to be in storage in Westport, Washington.

4 6. Plaintiff is agreeable to allowing Marine Lenders Services, LLC to assume the
5 responsibility of safekeeping the Vessel and its Crab Pots, and Marine Lenders Services, LLC
6 has consented to act as custodian of the Vessel and the Crab Pots until further order of this Court.
7 Fees and expenses to be charged by Marine Lenders Services, LLC will be substantially less than
8 the cost of leaving the Vessel and the Crab Pots in the custody of the U.S. Marshal.

9 6. Buck W. Fowler Jr, Managing Member by declaration, has stated that Marine
10 Lenders Services, LLC has no interest in the outcome of this lawsuit, can arrange for adequate
11 facilities and supervision for the proper safekeeping of the vessel, and has obtained the legal
12 liability insurance through Great American (Policy No. CL1932503366) with policy limits of
13 not less than \$2,000,000 which is expected to be adequate to respond in damages for loss of or
14 injury to the Vessel resulting from their legal liability or for damages sustained by third parties
15 due to any acts, faults or negligence of the substitute custodian. Further, in his declaration, Buck
16 W. Fowler Jr, on behalf of Marine Lenders Services, LLC has agreed to accept custody of the
17 vessel and its equipment, including the crab pots, in accordance with the terms of this Order.

18 7. In consideration of the U.S. Marshal's consent to the appointment of Marine
19 Lenders Services, LLC as substitute custodian, plaintiff agrees to release the United States and
20 the U.S. Marshal from any and all liability and responsibility arising out of the care and custody
21 of the defendant vessel and its equipment, from the time the U.S. Marshal transfers custody of
22 the vessel over to the substitute custodian, and plaintiff further agrees to indemnify and hold the
23 United States and the U.S. Marshal harmless from any and all claims whatsoever arising out of
24 the substitute custodian's possession and safekeeping of the Vessel and its Crab Pots.
25
26

Order

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. That upon the seizure of the defendant vessel, the F/V ELECTRA BLUE, Official No. 567048, and all its appurtenances, including the Crab Pots, pursuant to the Warrant of Arrest, the U.S. Marshal for the Western District of Washington is authorized and directed to surrender custody of the vessel to Marine Lenders Services, LLC as substitute custodian herein, and that upon such surrender, the Marshal shall be discharged from his/her duties and responsibilities for the safekeeping of the vessel and held harmless from any and all claims arising out of said custodial services.

2. That Marine Lenders Services, LLC, as substitute custodian, shall see to and be responsible for the safekeeping of the Vessel and its Crab Pots. The duties of the substitute custodian shall include, but are not limited to, ensuring that there is adequate, safe moorage for the Vessel and storage for the Crab Pots. The substitute custodian is not required to have a person live on board the Vessel, but an officer or authorized agent of the substitute custodian shall go on board the Vessel, from time to time to carry out the duties of substitute custodian. No other person shall be allowed to enter on the Vessel except as provided for herein or as otherwise expressly authorized by order of this Court.

3. That the defendant Vessel may be moved by tug or other safe means from its present moorage or storage to adequate, safe moorage at the facilities of the substitute custodian on the Lake Washington Ship Canal, Seattle, Washington or other suitable location. The substitute custodian shall notify the office of the U.S. Marshal that the Vessel is to be moved and shall again notify the office of the U.S. Marshal when the Vessel has been moved. Once the Vessel has been moved to the facilities of the substitute custodian or other suitable moorage, the Vessel shall not be moved again without further order of the Court. The Crab Pots may be moved from their present storage location to another safe storage location selected by the substitute custodian. The substitute custodian shall notify the office of the U.S. Marshal that the

1 Crab Pots are to be moved and shall again notify the office of the U.S. Marshal when the Crab
2 Pots have been moved.

3 4. That Marine Lenders Services, LLC, as substitute custodian, may if necessary
4 offload any cargo aboard the Vessel and arrange for storage of the same at a suitable storage
5 facility. The substitute custodian shall notify the office of the U.S. Marshal prior to engaging in
6 any such offloading of cargo and again upon the completion of any such offloading.

7 5. That Marine Lenders Services, LLC, as substitute custodian, with Plaintiff's
8 approval, may permit the Vessel to conduct normal operations while under Marine Lenders
9 Services LLC custodianship, including fueling, loading, discharging, cargo handling, repairs, and
10 vessel movement within the District, but at the risk and expense of the Vessel's interests. The
11 substitute custodian Marine Lenders Services, LLC shall ensure that the operations of the Vessel
12 conducted are normal port operations, *i.e.*, normal cargo operations, both discharging and
13 loading, repair work, fueling, and vessel movement, and that the Vessel always remains within
14 the waters of the District, unless and until otherwise ordered by the Court. The substitute
15 custodian shall notify the office of the U.S. Marshal prior to engaging in any such loading,
16 fueling and vessel movement and again upon the completion of such activity.

17 6. That Marine Lenders Services, LLC, as substitute custodian, may if necessary
18 offload any fuel and arrange for disposal of the same. The substitute custodian shall notify the
19 office of the U.S. marshal prior to engaging in any such offloading and again upon the
20 completion of any such offloading.

21 7. That Marine Lenders Services, LLC, as substitute custodian, may, but is not
22 required to, retain a marine engineer familiar with the Vessel and to take him or her on board the
23 Vessel with authorized agents of Marine Lenders Services, LLC to assist in the securing of the
24 Vessel.

25 8. That Marine Lenders Services, LLC, as substitute custodian, may, but is not
26 required to, remove those pieces of electronic equipment on board the Vessel, if any, which may

1 be easily removed without damage to the Vessel, and that such removed electronic equipment
2 shall be stored in a safe, secure storage pending further Order of this Court.

3 9. That Marine Lenders Services, LLC, as substitute custodian, may, but is not
4 required to, retain such services as are necessary to clean the interior and/or exterior of the
5 Vessel, remove food products with such services to be performed under the supervision of the
6 substitute custodian.

7 10. That plaintiff shall arrange to pay charges for moorage or dryland storage of the
8 Vessel and the fees, costs and legal liability insurance premiums of the substitute custodian and
9 shall reimburse the substitute custodian for such other costs as may be incurred in conduction of
10 the inventory of the equipment on board, in securing the Vessel, in having the Vessel cleaned, in
11 moving the Vessel, coordinating removal of personal effects by crew members and inspections
12 by prospective purchasers, and / or in offloading any cargo or fuel from the Vessel.

13 11. Prospective purchasers of the defendant Vessel F/V ELECTRA BLUE and, if
14 requested, their designated marine surveyors, may be allowed reasonable access to the Vessel for
15 purposes of conducting visual inspections, surveys by marine surveyors, and possible sampling
16 of the lubricating oils of the vessel's engines, reduction gears, generators, and other rotating
17 machinery for chemical analysis, pursuant to the following terms and conditions:

18 A. All such inspections, surveys, and/or samplings shall be conducted under
19 the supervision of the Substitute Custodian, Marine Lenders Service, LLC, at such times
20 and location, and by such individuals, as may be approved by, and arranged in advance
21 with, the substitute custodian. The costs of the substitute custodian's services for such
22 activities shall be a *custodia legis* cost in these proceedings.

23 B. Any and all persons boarding any of the Vessel for any purpose must first
24 provide to the aforesaid Substitute Custodian a properly executed release in the form of
25 the attached Exhibit A.
26

1 C. No papers, equipment, supplies or other materials, with the exception of
2 oil samples, may be removed from any of the Vessel except upon the prior written
3 approval of the Substitute Custodian or Plaintiff's counsel.

4 D. This Order does not approve sea trials by any prospective purchaser.

5 12. Any prior master or member of the crew of the Vessel may, with the prior
6 permission of the substitute custodian, board the Vessel for the purpose of identifying and
7 removing clothing and other personal effects of the master or crew member, subject to the
8 following conditions: Prior to any such boarding(s) the conditions stated in subparagraph 11(B),
9 above, must first be satisfied, and prior to the removal of any personal effects, such personal
10 effects to be removed from the Vessel must be first specifically identified to Plaintiff's
11 satisfaction and their removal authorized in writing by Plaintiff or Plaintiff's counsel.

12 13. That subject to final approval by the Court, all fees, costs and expenses incurred
13 by plaintiff or the substitute custodian pursuant to the terms of this Order shall be deemed
14 administrative expenses of the U.S. Marshal.

15 14. That plaintiff's attorney shall send a copy of this Order to the owner of the
16 defendant Vessel at the last address known by plaintiff, and to the address shown on the record
17 of the U.S. Coast Guard by Certified Mail, Return Receipt Requested.

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19 DATED: July 17, 2020
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24 RICARDO S. MARTINEZ
25 UNITED STATES DISTRICT JUDGE
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1 Presented by:

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